



DELAINÉ EASTIN
State Superintendent of Public Instruction

**CALIFORNIA
DEPARTMENT
OF
EDUCATION**

721 Capitol Mall

P. O. Box 944272

Sacramento, CA

94244-2720

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To: County and District Superintendents
County and District Chief Business Officials
Charter School Administrators

From: Janet Sterling, Director
School Fiscal Services Division

Subject: Overview of New Legislation

Prior to concluding the 2001 legislative session, a number of education bills were chaptered that will affect local education agencies (LEAs) and charter schools. The purpose of this memorandum is to provide a summary of some of the newly enacted legislation affecting K-12 education, along with guidance and clarification as appropriate. Unless otherwise specified, these bills became effective January 1, 2002.

AB 139, Chapter 620

This bill clarifies the authority and responsibility of county superintendents for the fiscal oversight of districts within their county. A new requirement under *Education Code* Section 1240 is for county superintendents to annually present a report to the school district board and the Superintendent of Public Instruction (SPI) regarding the fiscal solvency of any school district in the county with a disapproved budget, or with a qualified or negative interim certification, or that has been determined at any time during the year to be in a position of fiscal uncertainty.

Education Code Section 1241.5 is amended to authorize county superintendents to review or audit the expenditures and internal controls of any school district in the county if the superintendent has reason to believe that fraud, misappropriation of funds, or other illegal fiscal practices have occurred that merit examination. The audit must focus on the alleged fraud, misappropriation of funds, or other illegal fiscal practices and be completed in a timely and efficient manner. After the county superintendent reports any findings and recommendations to the governing board of the district, the district has an opportunity to respond.

If a county superintendent determines that a school district may be unable to meet its financial obligations or has a qualified certification, and if the superintendent determines that it is necessary to conduct a study of the financial and budgetary conditions of the district, that study must include a review of internal controls (*Education Code* Section 42127.6).

Education Code Section 42638 now requires the county superintendent to notify the governing board of the school district, the State Controller, the SPI, and the local district attorney if the superintendent determines there is evidence that fraud or misappropriation of funds has occurred.

AB 303, Chapter 551

Existing law authorizes certain special education local plan areas (SELPAs) to request designation as necessary small SELPAs if their total average daily attendance (ADA) is less than 15,000 for kindergarten through grade 12. For purposes of this determination, total ADA includes all of the school districts located in the county or counties participating in the local plan, except those districts participating in a countywide SELPA located in an adjacent county that also meets certain criteria. This bill would authorize a necessary small SELPA that experiences a reduction in its funding from the prior year to claim an amount equal to 40 percent of the reduction, in addition to the current year funding.

AB 441, Chapter 155 (as amended by AB 804, Chapter 734) (Urgency Measure)

This bill establishes the Fairness in Education Funding Act, which sets forth a new base revenue limit equalization formula. The formula adjusts school district base revenue limits to a level at which only 10 percent of the ADA in the state are receiving a higher base revenue limit. This “90th percentile” is calculated by size and type of district. The sum of \$40 million was appropriated for this purpose, which only partially funds the program. The Governor has proposed in his 2002-03 budget that the \$40 million appropriation for equalization in the current year (2001-02) and budget year be deferred until funds are available in a future budget. If the Legislature adopts this proposal, then the first round of equalization would likely not occur until the 2003-04 fiscal year.

AB 804, Chapter 734 (Urgency Measure)

This bill is the California Department of Education’s (CDE) annual technical clean-up bill, which includes the following changes in law:

- *Education Code* Section 17582 is amended to include a sentence defining the term “school building” to include a facility that a county office of education is authorized to use. The inclusion of this language ensures that county offices of education can use their deferred maintenance funds on any legally occupied buildings, despite recent changes to the Office of Public School Construction (OPSC) Deferred Maintenance Handbook.
- Also amended is the section of law (*Education Code* Section 17584) affecting the calculation of the amount that LEAs are required to budget from local funds in order to receive state aid from the State School Deferred Maintenance Fund. LEAs are now

allowed to exclude revenues that are passed through to other LEAs from the amount they budget from local funds. Previously, only amounts expended for capital outlay and debt service were excluded.

- Qualified "administrative expenses" for the five percent cap imposed on the Peer Assistance and Review Program for Teachers are now defined in *Education Code* Section 44503. Administrative expenses include expenditures for the personnel costs of program administration and coordination, the cost of consulting teacher selection, and indirect costs associated with the Peer Assistance and Review Program for Teachers.
- For the purpose of computing the declining enrollment adjustment for district revenue limits, *Education Code* Section 47661.5, as added by Section 27, allows a school district to include the prior year resident ADA of a district school that, in the past had converted to a charter school, but in the current fiscal year has returned to traditional school status. This eliminates the loss of funding to a district when a traditional district school converts to a charter school and then converts back to traditional school status.
- *Government Code* Section 3540.2 is amended to require county offices of education with qualified or negative interim reports to allow the Superintendent of Public Instruction six working days to review and comment on proposed collective bargaining agreements prior to their ratification. This provision is consistent with the existing requirements contained in *Government Code* Section 3540.2(a) for school districts.
- Item 6110-210-0001 of the 2001 Budget Act is amended. As originally enacted, this item appropriated \$250 million for a one-time allocation to school districts, county superintendents of schools, and charter schools to be used for energy conservation measures, increased energy costs, career/technical education one-time purposes, or any other one-time educational purpose.

The energy assistance program provides funding to each LEA on the basis of an equal amount per unit of 2000-01 second period ADA or \$14,000 per school site, whichever is greater. The definition of ADA for this purpose includes an ADA amount that is computed from enrollment data from pre-school and child development programs that are under contract with CDE but that are operated by LEAs and on LEA school sites. AB 804 modifies the method of computing this derived ADA and clarifies the definition of "school site" for purposes of the minimum grant amount provided in the Budget Act language.

Allocation of the \$250 million was expected to begin early next spring; however, the Governor has proposed eliminating this one-time funding in the current year as part of his 2002-03 budget. Distribution of the required certification form has been delayed pending action by the Legislature on the Governor's proposed budget.

SB 6, Chapter 794 (Urgency Measure)

This bill amends *Education Code* Section 42238.12, which currently reduces school district and county office of education 2001-02 revenue limits to reflect local "savings" based on the difference between the 2001-02 Public Employees' Retirement System (PERS) employer contribution rate and the relatively lower 1981-82 rate. The 2001 Budget Act appropriates \$35 million to lessen the impact of the PERS revenue limit offset, and SB 6 provides the formula to allocate the \$35 million. Current estimates indicate each district and county office will see about a 5 percent reduction in the PERS offset. The Governor has proposed in his 2002-03 budget that the \$35 million appropriation to fund the reduction in the PERS offset in the current year (2001-02) and budget year be deferred until funds are available in a future budget. If the Legislature adopts this proposal, then implementation would likely not occur until the 2003-04 fiscal year.

SB 178, Chapter 573

Beginning with the 2001-02 school year, SB 178 requires districts that participate in the longer school year incentive program to offer 180 school days, thus repealing previous law that allowed districts the flexibility to meet the 180 school day provision by providing the annual minutes of 180 school days. (The current exemption for multi-track year-round schools remains.) The bill provides an exemption from the 180 school day requirement for school districts that have a teacher bargaining contract in effect on January 1, 2002, that provides the minutes of 180 school days in less than 180 school days. For these districts, the 180 school day requirement would not apply until the first fiscal year following the end of the contract's applicability.

The bill revises the formula for determining the repayment amount for districts and county offices that fail to comply with the provisions for receiving longer day and longer year incentive funds. SB 178 also allows the State Board of Education (SBE) to waive any fiscal penalties for failure to comply with the longer day or longer year requirements, subject to the district or county office making up the lost minutes or days for twice the number of years of the shortfall.

SB 273, Chapter 574

This bill authorizes the SBE to consider and waive penalties for "minor or inadvertent" failures to hold public hearings on the sufficiency of textbooks, as required in *Education Code* Section 60119. Approximately 60 school districts received audit findings in fiscal year 1999-2000 for noncompliance with *Education Code* Section 60119. Information regarding the SBE waiver process can be found at: www.cde.ca.gov/waiver.

SB 348, Chapter 723 (Urgency Measure)

SB 348 is the annual mandate claims bill, which provides funds to reimburse LEAs for the cost of mandates that have been approved in the last year. The bill contains funds for three new mandates affecting LEAs: (1) \$5.5 million for annual parent notifications related to staff development, (2) \$31.2 million for school crimes reporting, and (3) \$66.7 million for school bus safety. Funds for the first two mandates will be distributed by the State Controller's Office (SCO) based on claims submitted by LEAs in accordance with the normal procedure for distributing mandate funds.

The funds appropriated for school bus safety represent a significant reduction from the amount proposed in January. The reduction was imposed by the Legislature due to concerns about the cost of the mandate. SB 348 provides that appropriation of the \$66.7 million is contingent on completion of a report by the State Auditor regarding the costs of the mandate (due March 30, 2002), a determination by the State Controller regarding the extent to which releasing the funds is consistent with the findings of the State Auditor, legislative notification by the Department of Finance that it intends to approve release of the funds, and approval of this action by the Joint Legislative Audit Committee.

SB 675, Chapter 344

This bill adds subsection (m) to *Education Code* Section 47605 to require charter schools to transmit a copy of their annual audit to CDE and the chartering entity by December 15 of each year. While charter schools have always been required to have an annual independent audit, this bill ensures that CDE and the authorizing entity receive a copy beginning with the 2001-02 audit reports.

SB 735, Chapter 891

Section 20 of this bill amends *Education Code* Section 45023.1 to change the deadline for certification of participation in the 2000-01 Beginning-Teacher Minimum Salary Incentive Program. Deadlines were pushed back from March 1, 2001 to September 30, 2001 to facilitate maximum participation in the program.

Section 22 of SB 735 adds Chapter 2.5 (commencing with Section 54200) to Part 29 of the *Education Code*. These sections establish the Targeted Instructional Improvement Grant (TIIG), an annual per pupil allocation that will replace the court ordered desegregation and voluntary integration programs commencing with the 2001-02 fiscal year.

SB 740, Chapter 892

This bill amends *Education Code* Section 47612.5 and adds *Education Code* Section 47634.2 to make significant changes to the funding process and to enact possible funding reductions for charter schools that offer nonclassroom-based instruction. Possible funding reductions are triggered when a charter school does not require attendance of its pupils to be at the school site under the direct supervision and control of a qualified teaching employee of the school for at least 80 percent of the required instructional time.

SB 740 prohibits an approved charter school from receiving any funding for nonclassroom-based instruction, unless the SBE determines its eligibility for funding. The bill also authorizes the SBE to adjust the apportionment of charter schools for ADA generated through nonclassroom-based instruction in the current and subsequent fiscal years. The SBE is required to adopt emergency regulations by February 1, 2002 to establish criteria, conditions, and limitations for the approval and adjustment of funding for charter schools that offer nonclassroom-based instruction. The SBE has already established an advisory commission to recommend criteria for the implementation of these requirements.

For the 2001-02 school year, the law limits any funding reduction for a school to no more than 10 percent. The Governor requested in his signing message to the bill that the SBE impose no more than a 5 percent reduction for this year. For this year only charter schools will be eligible for full funding if the SBE fails to act on a request for funding by March 19, 2002.

The bill now requires that charter schools submit a copy of their independent audit to the SCO and the CDE and requires that the charter schools be subject to the same audit requirements that currently apply to school districts pursuant to *Education Code* Section 41020, including the basis for the ADA reported and the number of minutes offered for instruction. This includes the requirement that county superintendents of schools and the SPI review and resolve audit exceptions contained in the audit report. The formal resolution processes outlined in *Education Code* Section 41344 now also apply to charter school audits (corrective action plans, waivers, repayment plans and audit appeals).

SB 740 also establishes the Charter School Facility Grant Program (*Education Code* Section 47614.5) to provide reimbursement to charter schools of up to \$750 per ADA for up to 75 percent of actual facilities rental and lease costs. The 2001 Budget Act appropriated \$10 million for this program; however, the Governor has proposed a \$5 million reduction in the current year appropriation as part of his proposed 2002-03 budget.

A charter school will be eligible only if it operates in nondistrict facilities, does not receive facilities under Proposition 39, operates a classroom-based instructional program, and is located in an elementary school attendance area in which at least 70 percent of the pupils are eligible for free and reduced price meals.

This bill also requires CDE to notify schools of the facilities program, establish a program application, and administer the program. CDE will be notifying charter schools how to apply for this program in the near future. Charter schools that may be eligible for this program are encouraged to evaluate and clearly document their facilities costs for the current year in anticipation of program eligibility. While SB 740 technically went into effect on January 1, 2002, its funding provisions affect the entire 2001-02 fiscal year. CDE will be working closely with the SBE's advisory commission to establish procedures and criteria as soon as possible.

SB 786, Chapter 914

This bill adds *Education Code* Section 60450.1 which requires school districts that received Schiff-Bustamante Standards-Based Instructional Materials Program funding to purchase instructional materials aligned with state content standards in language arts, mathematics, history/social science, or science within two years of the date of the adoption of the materials by the SBE. School districts will be required to report to the SPI any funding received from the Schiff-Bustamante Standards-Based Instructional Materials Program that has not been used pursuant to the program within two years of receipt by the school district. The SPI may offset future apportionments of instructional materials funding in order to recover the reported unspent funds. However, the SBE may grant extensions if a school district meets specified requirements.

SB 786 further states that it is the intent of the Legislature that LEAs shall not carry over *any* funds in accounts appropriated for the purchase of instructional materials (i.e., K-8 and 9-12 Instructional Materials Program funding) beyond two fiscal years from the completion of a full instructional materials adoption cycle. At this time, however, the bill does not require recapture of balances other than in the Schiff-Bustamante Standards-Based Instructional Materials Program.

SB 955, Chapter 586 (Urgency Measure)

SB 955 amends *Education Code* Section 47612.5 to specify that instructional minute requirements and student testing compliance are conditions of apportionments for charter schools. This amendment will authorize the CDE to reduce funding to charter schools that do not comply with the specified requirements. It also specifies that any funding reduction made as a result of noncompliance with these requirements be proportional to the magnitude of the exception. The bill also changes the funding mechanism for block grant funded charter schools with pupils who reside in a basic aid district; however, technical problems with the language are currently preventing implementation. Because this bill is an urgency measure, these changes went into effect when the Governor signed it on October 5, 2001.

SB 982, Chapter 203 (Urgency Measure)

SB 982 implements the Special Education Mandated Cost Settlement, including \$520 million in one-time funding in lieu of reimbursement for claims for the past 20 years and \$100 million in ongoing increases for special education funding. This bill requires the SPI to perform specified computations with respect to SELPAs and affected pupils and to permanently increase the amount per unit of ADA for those areas. Specifically, SB 982:

- augments Budget Act item 6110-161-0001 by \$100 million. These funds will increase the state General Fund entitlement for special education on an ongoing basis.
- provides \$25 million on an annual basis each fiscal year for ten years (2001-02 through 2010-11), for a total of \$250 million. This is one-time funding to be allocated to school districts on a per-pupil basis.
- provides \$270 million on a one-time basis to be allocated in 2001-02 as follows:
 - \$250.5 million to school districts based on ADA reported at the Second Principal (P-2) Apportionment for 1999-00.
 - \$10.8 million to county offices of education based on the special education pupil counts reported in December 1999.
 - \$2.7 million to SELPAs that existed in fiscal year 1999-00 based on the special education pupil counts reported in December 1999.
 - \$6 million to Riverside County Office of Education.
- is not included in the charter school block grant funding model.

Apportionments for the various special education settlement funds for the 2001-02 fiscal year have been completed, with the exception of the \$100 million Budget Act augmentation, which will be apportioned in February 2002.

We hope the information contained in this letter is helpful; if you have any questions or if we can be of further assistance, please call us at (916) 322-3024 or visit the division's website at: www.cde.ca.gov/fiscal.

NOTICE:

The guidance in this memorandum is not binding on local education agencies or other entities. Except for the statutes, regulations, and court decisions that are referenced herein, this memorandum is exemplary, and compliance with it is not mandatory. (See *Education Code* Section 33308.5.)